

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 14-1624

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:00 p.m., February 23, 2015 on the Application of **CHESAPEAKE LANDING RESTAURANT**(Applicant). The Applicant is seeking the modification of a special exception to permit the conversion of interior office space to a waiting area with bar with an additional thirty-two (32) seats. The request is made in accordance with Chapter 190 Zoning, Article IX §190-180 E of the Talbot County Code (*Code*). The property is located at 23713 St Michaels Road, St. Michaels, Maryland in the Rural Conservation (RC) zone. The property owner is Spurry Family Partnership and the property is shown on Tax Map 22, Grid 5 Parcel 2.

Present at the hearing for the Board of Appeals were: Paul Shortall, Jr., Chairman; Phillip Jones, Vice Chairman; and members Rush Moody, Jr., John Sewell, and Margaret Young. Anne C. Ogletree served as attorney for the Board of Appeals. Jeremy Rothwell, Talbot County Planner I, was in attendance. The Chairman inquired if all members had visited the site and received affirmative responses.

The following exhibits were offered and admitted into evidence as Board's Exhibits, as indicated.

- Exhibit 1. Application for Modification of a Special Use Exception;
- Exhibit 2. Copy of tax map of subject property;
- Exhibit 3. Notice of Public Hearing to be published in the Star Democrat;
- Exhibit 4. Newspaper Confirmation;
- Exhibit 5. Notice of Public Hearing & Adjacent Property Owners List attached;
- Exhibit 6. Special Exception Modification Standards, questions and answers;
- Exhibit 7. Staff Memo, prepared by Jeremy Rothwell, on 12/17/14;
- Exhibit 8. Planning Commission Recommendation;
- Exhibit 9 Sign Maintenance Agreement;
- Exhibit 10. Site Plan and floor plans;
- Exhibit 11. Critical Area Commission Letter from Jennifer Anderson dated 01/16/15;
- Exhibit 12. Email from Rochelle Outten, State Highway Administration dated 01/06/15;

Exhibit 13. Independent Procedures Disclosure and Acknowledgment Form;
Exhibit 14. Board of Appeals Decision No. 744;
Exhibit 15. Board of Appeals Decision No. 842;
Exhibit 16. Board of Appeals Decision No. 885;
Exhibit 17. Aerial Photo;
Exhibit 18. Letter form Office of State Fire Marshal, Scott Mason Inspector.

Mr. Shortall asked those who might wish to testify to identify themselves and be sworn. He then swore Joseph Spurry, Sr., Joseph Spurry, Jr., and Erin Spurry, all of whom were members of the Spurry Family Partnership. He invited the first witness to describe the modification sought.

Mr. Joseph Spurry, Jr. acted as spokesperson for the Applicant. Mr. Spurry explained that the Applicant wished to renovate unused office space in the restaurant building for use as a waiting area and bar. He told the Board that the Applicant owned the property that is the subject of the application, and shared some of its history. There are two commercial buildings on the property, the seafood processing plant, formerly the Harrison and Jarboe packing house, a seafood market and the restaurant. *See*, p. 3, Exhibit 10, Site Plan and Exhibit 17. Aerial photograph. When the Spurry's purchased the property in 1986 the market and packing house were permitted uses. They wished to expand and requested permission to (1) expand the market and (2) use a portion of the enlarged structure as a restaurant. Seating was to be limited to seventy-five (75) as the primary focus of the business was seafood carry out. A beer and wine alcoholic beverage license was also approved. *See* Exhibit 9, Staff Report; Exhibit 14, Board Decision No. 744.

In 1989 following the enactment of the Critical Areas Law the zoning changed from C-1 to RC, as the property is entirely within the Chesapeake Bay Critical Area. The market and restaurant uses on the property became non-conforming at that time. Exhibit 9, p. 2. The county's Critical Areas Ordinance discourages intensification of non-conforming uses in the Critical Area.

In 1992 the Applicant requested a modification of the original special exception and enlargement of the existing nonconforming use to increase the number of seats in the restaurant. The request was approved, with a limitation. The restaurant capacity was to be

either “125 seats or the number allowed by the fire marshal, which ever is less.”¹ Exhibit 16, Board Decision No. 855; Exhibit 9 p.2.

Mr. Spurry explained that the space to be renovated was a six hundred (600) square foot office (shown on Exhibit 10, p.2). About two (2) years ago the family decided to relocate the office to the processing plant, and the office space in the restaurant building has been unused since that time. The Applicant would like to renovate the space and provide a waiting area, with a bar for customers waiting to pick up seafood, or persons arriving early for restaurant reservations. The space currently exists and is unused. The only changes will be to the interior of the structure with the addition of a bar and additional seating capacity of thirty-two (32) seats. The Applicant is also requesting a modification in operating hours. The Planning Commission approved an extension of closing time to 10:00 P.M.

In answers submitted with Exhibit 6, the Applicant stated that there was sufficient off street parking, and that the property was serviced by its own well. Sewage is directed to holding tanks, and hauled off premises. The Applicant is licensed to provide that service.

Mr. Spurry noted that the restraint is accessed directly from Md. Rt. 33. The Addition of an additional thirty-two seats would not cause any increase in truck traffic entering or leaving the site. Off street parking was sufficient and complies with that required even allowing for the additional seating capacity. Conditional approval of the site plan showing the renovation was granted by the Planning Commission in December 2014. Exhibit 8.

Mr. Joseph Spurry, Sr. added that the fire marshal had visited the site and approved the renovation. *See*, Exhibit 18. He felt the fire marshal’s letter adequately addressed public safety concerns.

Mr. Rothwell noted that the Applicant’s proposal was forwarded to the Critical Areas Commission (CAC). That agency has no objection to the proposed renovations described in the application since all of the improvements are to the interior of an existing

¹ A 1991 modification permitted the business to obtain a Class F liquor license to permit the on and off premises sale of beer and light wine and to allow the on premises sale of liquor. Exhibit 15, Board Decision No. 842.

building. Exhibit 11.

There were no other members of the public present for the hearing, Mr. Shortall asked the Board members for their comments.

Mr. Moody commented that since the Fire Marshal had approved the change he was satisfied that the Applicant had met the standards required to support the modification. Mr. Jones concurred.

Ms. Young had only one question. She asked if anyone could explain why the language in Decision No. 885 limited the seating capacity to the 'lesser of' that approved by the Board or the office of the fire marshal. She wished to understand the reasoning for the wording.

Mr. Shortall, who had been a member of the Board at the time, did not recall why the Board had phrased the limitation in that fashion. He remarked that he felt the Applicant had satisfied the public safety requirement since the increase in seating capacity was approved by the Fire Marshal. Mr. Sewell agreed.

Based on the written responses, the Applicant's testimony and the evidence presented, the Board finds that:

1. The property that is the subject of the Application was the home of a seafood processing plant, formerly the Harrison and Jarboe packing house, at the time it was acquired by the Spurry Family Partnership. The 1974 zoning of the parcel was C-1, general commercial, and permitted the seafood market and similar commercial enterprises as of right. The restaurant was initially permitted by special exception in 1988 as evidenced by this Board's Decision No. 744, Exhibit 14.

In 1989, as a result of Critical Areas legislation and related planning, the parcel, located entirely within the Chesapeake Bay Critical Area, was rezoned to RC. Both the seafood market and the restaurant became legal nonconforming uses with the rezoning. There were approved modifications to the special exception for the restaurant portion of the business in 1991 (Exhibit 15, Board Decision No. 842) and 1992, (Exhibit 16, Board Decision No. 855.)

The current application has been recommended by the Planning

Commission, Exhibit 8, and the CAC has no objection to the proposed renovation, Exhibit 11.

2. Although the RC district is intended to preserve open space and natural resources, the uses existing on this parcel preceded the current zoning, and are legally existing nonconforming uses. *Code*, §§ 190-8; 190-164 Expansion of a nonconforming use is permitted by special exception. In the instant case, there will be no increase in lot coverage, all renovations will be within the existing structure. The proposed application does not violate the policies of the 2005 Comprehensive Plan.
3. The existing uses are legally existing nonconforming uses. The *Code* permits them to continue and, subject to the safeguards set out in *Code*, § 190-180 E (2), allows them to be modified or enlarged. The proposed renovations will not change the exterior of any buildings existing on site or add impervious surface. The new bar/waiting area will add thirty-two (32) seats, thus enlarging the restaurant business without changing the footprint of the structure. The CAC has no objection to the renovation for this reason. See, Exhibit 11.
4. The restaurant and market have been in their current location for over twenty (20) years. In the immediate vicinity are a variety of uses – agricultural, low density residential and forestry. Exhibit 17, Aerial photograph. As no change in the exterior of the building is planned, there will be no change in the scale, bulk or height of the building. None of the property owners of nearby land have objected to the renovation.
5. There will be no adverse effect on surrounding properties as the restaurant use currently exists and the addition of additional capacity will not create additional noise, glare, dust, vibration, air or water pollution. Adjusting the hours of operation so that the restaurant may remain open until 10:00 p.m. will not create an issue.
6. The property is serviced by a state road designed for heavy traffic. The off street parking is accessed from an approved state highway entrance, and no additional issues are anticipated. See, Exhibit 12. Since the building and use

currently exist, there will be no additional burden on police or fire protection. The office of the state fire marshal has determined that the increase in seating capacity is permissible.

7. No effect is anticipated on marine or pedestrian traffic. There will be no significant effect on vehicular traffic.
8. It is not anticipated that access to the restaurant by some number of additional patrons will exceed the capacity of Md. Rt. 33, the road serving the property.
9. The slight increase in seating capacity will not result in a change in the number of delivery trucks accessing the site or result in additional traffic issues.
10. The Board finds that all adjacent land owners have been properly notified *See*, Exhibits 3,4 and 5.

For the reasons set out in the Board's findings, Mr. Moody made a motion that the modification be approved subject to (1) the conditions set out in previous decisions, except as modified by this decision extending the closing time until 10:00 p.m. (2) seating capacity will be limited to the greater of the capacity approved by this Board or the State Fire Marshal; and (3) the following conditions recommended by Planning Department staff:

- A. The Applicant shall comply with COMAR 10.15.03 with regards to the submittal of a food facility plan to the Office of Environmental Health. No building permit shall issue without such compliance;
- B. The Applicant shall make all applications required by the Department of Permits and Inspections and shall adhere to all rules, procedures and construction timetables established by that agency; and
- C. The Applicant shall commence construction within eighteen (18) months of the date of Board of Appeals approval.

Mr. Jones seconded the motion. There was no further discussion on the motion. The Chairman called for a vote. The motion passed, 5-0.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS,
BY THE TALBOT COUNTY BOARD OF APPEALS,

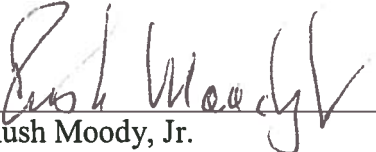
RESOLVED, that the Applicant, CHESAPEAKE LANDING RESTAURANT (Appeal No. 14-1624) is **GRANTED** the requested special exception modification consistent with the evidence presented to the Board of Appeals, subject to the aforementioned conditions, by vote as previously noted.

GIVEN OVER OUR HANDS, this 9th day of March, 2015.

TALBOT COUNTY BOARD OF APPEALS


Paul Shortall, Jr., Chairman


Phillip Jones, Vice Chairman


Rush Moody, Jr.


John Sewell

Unavailable for Signature
Margaret Young